Supreme Court, U.S.
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No. 05- 05-817

IN THE

Supreme Court of the United States

GLEN GUADALUPE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

MARK E. CEDRONE
CEDRONE & JANOVE
Suite 940 Public Ledger Building
150 South Independence Mall West
6th and Chestnut Streets
Philadelphia, Pennsylvania 19106
(215) 925-2500

Attorneys for Petitioner

198370

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED FOR REVIEW

1. Whether the court below – contrary to the position of at least one other circuit court, as well as this Court's recent suggestion – erroneously determined that the federal nexus/interest requirement of witness tampering under 18 U.S.C. § 1512(b)(3) requires no proof that petitioner knew or believed that the person he attempted to tamper with might communicate with federal authorities?

2. Whether in light of this Court's decision in *Arthur Andersen v. United States*, the court below applied erroneous standards while analyzing petitioner's complaints about the district court's jury instructions?

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Petitioner, Glen Guadalupe, respectfully requests a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit which was entered in this case on March 31, 2005 with rehearing being denied on July 19, 2005.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Third Circuit is reported at *United States v. Guadalupe*, 402 F.3d 409 (3d Cir. 2005) and is found in the Appendix (App. A). The judgment of the United States Court of Appeals for the Third Circuit entered on March 31, 2005 is found in the Appendix. (App. B). The Judgment of the United States District Court for the Eastern District of Pennsylvania in *United States v. Guadalupe*, Criminal No. 01-429(1) was entered on August 8, 2003 and can be found in the Appendix. (App. C). The Order of the United States Court of Appeals for the Third Circuit denying rehearing dated July 19, 2005 is found in the Appendix. (App. D).

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). On November 28, 2005, Justice Souter granted an extension of time to and including December 16, 2005 to file this petition.

This case was originally commenced by indictment in the United States District Court for the Eastern District of Pennsylvania. On May 9, 2002, after a jury trial, Petitioner was convicted of one count of obstruction of justice/witness tampering in violation of 18 U.S.C. § 1512(b)(3). On or about August 8, 2003, the district court sentenced Petitioner to 15 months imprisonment. Petitioner sought review of his conviction

and sentence before the United States Court of Appeals for the Third Circuit. By Opinion and Judgment dated March 31, 2005, the Court of Appeals affirmed Petitioner's conviction. (App. A and B). It is from that judgment (App. B) that Petitioner requested a writ of certiorari be issued.

STATUTORY PROVISIONS INVOLVED

In relevant part, the United States Code in effect at all times relevant to this case provided:[1]

> Whoever, knowingly . . . corruptly persuades another person, or attempts to do so with intent to . . . hinder, delay or prevent the communication to a law enforcement office, or judge of the United States of information relating to the commission or possible commission of a federal offense, [shall be guilty of a crime against the United States].

18 U.S.C. § 1512(b)(3).

For purposes of this section — . . .

> An official proceeding need not be pending or about to be instituted at the time of the offense.

18 U.S.C. § 1512(e)(1).[2]

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1. The relevant statutory provisions at issue in this case, specifically, 18 U.S.C. § 1512 was amended in a way not relevant to this case after the events in question and petitioner's trial. All statutory citations will be to code sections as they were codified during the relevant time period.

2. This provision is currently codified at 18 U.S.C. § 1512(f)(1).

In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstances —

(1) That the official proceeding before a judge, court or magistrate judge, grand jury, or government agency is before a judge or court of the United States, a United States Magistrate Judge, a Bankruptcy Judge, a Federal Grand Jury, or a federal government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the federal government or a person authorized to act for or on behalf of the federal government or serving the federal government as an advisory or consultant.

18 U.S.C. §§ 1512(f)(1) & (2).[3]

STATEMENT OF THE CASE

A. Proceedings and Disposition in the Courts Below

On or about July 26, 2001, a grand jury sitting in the Eastern District of Pennsylvania returned an indictment in this matter charging petitioner with two counts (Counts 3 and 4) of obstruction of justice in violation of 18 U.S.C. § 1512(b)(3). At the time of the offenses alleged, petitioner was employed as the Deputy Warden of the Curran Fromhold Correctional Facility ("CFCF"), a prison within the Philadelphia County Prison System.

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3. These sections are currently codified at 18 U.S.C. §§ 1512(g)(1) and (2).

The charges stem from petitioner's alleged efforts to hinder an internal prison investigation into an incident alleged to have occurred on March 11, 1999 during which correctional officers at CFCF severely beat Donti Hunter ("Hunter"), an inmate at CFCF. The grand jury concluded that correctional officers violated Hunter's 8th Amendment right to be free from cruel and unusual punishment.[4]

As to petitioner, the indictment alleged that with respect to two different individuals in a position to provide information about the March 11, 1999 incident, petitioner encouraged these people to provide less than truthful information to internal prison investigators.

On or about April 16, 2002, petitioner proceeded to trial on the charges laid in the indictment. After an approximate two week trial, on or about May 1, 2002, the jury found petitioner guilty of Count 3, but not guilty of Count 4.

On or about August 27, 2003, the district court, after granting a series of downward departures, imposed a sentence of 15 months imprisonment, special assessment of $100 and a $300 fine.

Thereafter, petitioner sought review of his conviction only[5] before the United States Court of Appeals for the Third

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4. The grand jury did charge several correctional officers with conspiracy to deprive Donti Hunter of his civil rights in violation of 18 U.S.C. § 241 and the substantive deprivation of Donti Hunter's civil rights in violation of 18 U.S.C. § 242. These charges were laid in Counts 1 and 2 of the indictment.

5. Petitioner did not challenge his sentence. In fact, petitioner did not even request bail pending appeal. Instead, petitioner served his prison sentence and is now on supervised release.